

# BEKA sales, delivery and payment terms

As of: 01/01/2019

## 1. General

1.1 The following terms apply to deliveries and services from Baier + Köppel GmbH & Co. KG (hereinafter: "BEKA"), provided that the orderer is an entrepreneur (§ 14 German Civil Code), a legal entity under public law or a public-law special fund.

1.2 Deviating purchasing terms of the orderer shall not become part of the contract due to lack of express objection by BEKA, nor by acceptance of the order. This shall also apply if the corresponding purchasing conditions of the orderer are received repeatedly.

1.3 In the absence of a special agreement, a contract between BEKA and the orderer is concluded upon written order confirmation by BEKA. Deviating agreements are only rendered valid if and as far as they are confirmed in writing by BEKA. Any individual agreements reached between BEKA and the orderer from case to case (including any side agreements, supplements and amendments) shall take precedence over these terms. A written contract or the written consent of BEKA shall be essential for the content of such agreements. In such a case, these terms are to be used for supplementation and interpretation, if and as far as they do not contradict the individual agreements.

1.4 BEKA retains all title and copyrights in templates, cost estimates, drawings and similar information of a material or immaterial type, either in print or electronic form. They must not be made accessible to any third parties without the consent of BEKA. In return, BEKA will make the information and documents designated as confidential by the orderer only accessible to any third parties with its consent as well.

1.5 The invalidity of individual provisions and the legally binding effectiveness of the remaining parts of the contract and terms shall not be affected.

## 2. Order

2.1 All orders are subject to confirmation and non-committal. This shall also apply if BEKA provides the orderer with catalogues, technical documentation (e.g. drawings, plans, computations, calculations, references to DIN standards), other product descriptions or documents – also in electronic form – in which BEKA reserve title and copyright. Orders shall only bind BEKA upon its written order confirmation.

2.2 The documents that belong to an order, such as figures, drawings, weight and dimension indications, shall only become part of the contract if they were explicitly designated as binding by both parties in writing.

## 3. Delivery

3.1 The delivery times result from the agreements between the parties. Compliance with them by BEKA requires that all commercial and technical questions have been answered between the parties and the orderer has met all its obligations, such as making a downpayment. If this is not the case, the delivery times extend accordingly. Compliance with the delivery time is subject to the reservation of correct and timely delivery to BEKA. BEKA shall inform the orderer of any delays that become evident.

3.2 The delivery times have been complied with if the objects to be delivered have left the factory of BEKA by the end of the delivery period or if readiness for shipment has been reported by BEKA. If and as far as acceptance of the delivery object is required, the acceptance date shall be relevant, and alternatively the declaration of readiness for acceptance, apart from the case of justified refusal of acceptance. If shipping or acceptance of the objects to be delivered is delayed for reasons for which the orderer is at fault, then it shall be charged the costs resulting from the delay, starting two weeks after declaration of shipping or readiness for acceptance.

3.3 If the delivery period cannot be complied with due to force majeure, such as war, fire, legal strike, shut-out, authority measures, nature disaster, in particular storm, earthquake and similar incidents, or any other events outside of the area of influence of the BEKA, the delivery periods shall be extended accordingly. BEKA shall inform the orderer of any recognisable delays as soon as possible. If there is any pervasive effect on the operating structure of BEKA, the orderer's claim to performance is lost.

3.4 If essential price increases, e.g. for raw materials or wage costs, occur before the delivery, this shall be considered in invoicing. The orderer shall only have a right to demand adjustment of the contract due to circumstances that have become the basis of the contract and that have changed severely after conclusion of the contract if adjustment of the contract by stipulation of an increased price is not possible and reasonable.

3.5 The place of performance for the delivery is the delivery factory or the storage site of BEKA.

## 4. Shipping and passing of risk

4.1 Shipping takes place for the orderer's account. The shipping method shall be determined by BEKA, except if the orderer expressly indicates a specific shipping method desired by it.

4.2 Packaging shall be charged to the orderer at cost. Remuneration for returned packaging material shall not take place.

4.3 The risk of accidental destruction and accidental deterioration of the delivered object shall pass to the orderer if the object of delivery has left the delivery factory or the storage site. This shall apply even if partial deliveries are made or BEKA has taken over further services, such as the delivery and setup. If and as far as acceptance of the object of delivery must take place, this shall determine the time at which risk passes. The orderer shall be obligated to perform acceptance without

delay at the acceptance date or upon declaration of readiness for acceptance by BEKA. The orderer shall not have the right to refuse acceptance if there is an inessential defect. If shipping or acceptance of the object of the delivery is delayed or omitted due to circumstances for which BEKA is not at fault, the risk shall pass to the orderer from the day of declaration of the readiness for shipping or acceptance.

4.4 If the orderer enters default of acceptance, does not perform any contribution action or if the delivery by BEKA is delayed for any other reasons due to the orderer's fault, BEKA shall have the right to demand reimbursement for the resulting damage, including additional expenses (e.g. storage fees). For this, BEKA shall charge an appropriate remuneration, starting with the delivery period or, if there is no delivery period, at declaration of readiness for shipment of the goods or readiness for acceptance. Evidence of a higher damage and the statutory claims of BEKA, in particular reimbursement for additional expenses, appropriate remuneration, termination, shall not be affected. The flat-rate shall, however, be set off against further monetary claims. The orderer shall have the right to prove that BEKA has incurred no or a much lower damage than the demanded flat-rate.

4.5 BEKA shall only take out insurances of the object of delivery against breaking, fire and water damage if instructions for this were issued by the orderer in writing.

4.6 Further secondary costs in connection with shipping, such as customs duties, storage and similar costs, shall be assumed by the orderer.

4.7 If and as far as this is reasonable for the orderer, partial deliveries shall be permitted.

## **5. Payment**

5.1 The invoiced amounts shall be due for payment net 30 days after the invoiced date.

5.2 In case of cash payment within 14 days after issuing of the invoice, a discount of 2% of the invoiced amount is granted. The prerequisite for this is that all due invoices are settled.

5.3 The place of performance for any payments shall be the headquarters of BEKA.

5.4 The payment by bill of exchange or cheque shall take place in lieu of performance; payment by bill of exchange shall require separate explicit agreement. Discount expenses shall be remunerated by the orderer in cash after submission. BEKA shall not assume any obligation to submit or procure protest without delay for any bills of exchanges drawn to secondary positions or abroad.

5.5 The due date of the claims of BEKA shall be independent of the receipt of the delivery object by the orderer. The orderer's right to retain payments or to set off against counter-claims shall only apply as far as the counter-claim is undisputed or finally determined.

5.6 In case of default of payment, interest and commission fees at 8 percentage points above the base interest rate shall be charged. Assertion of any default damage exceeding this shall not be affected by this.

## **6. Reservation of title**

6.1 Any goods delivered by BEKA shall remain its property (reserved goods) until settlement of all current and future claims of BEKA against the orderer from the delivery contract and the current business relationship. This shall specifically also apply until the respective balance claims that BEKA has against the orderer are met – no matter the legal basis.

6.2 The reserved goods must not be pledged to third parties, nor provided as collateral, before complete payment of the secured claims. The orderer shall inform BEKA in writing without delay if and as far as third parties access the goods belonging to BEKA.

The orderer shall have the right to sell on and/or process the reserved goods in its proper course of business according to the proviso of the following stipulations.

6.3. The reservation of title shall cover the products resulting from processing, blending or combination of the goods of BEKA, with BEKA being deemed the manufacturer.

6.3.1 If the third party's property rights are preserved at processing, blending or combination with goods of third parties, BEKA shall acquire shared title at the ratio of the respective invoiced value of the processed, blended or combined goods. Apart from this, the same as for the goods delivered subject to retention of title shall apply to the resulting product.

6.3.2 If the title of BEKA expires nevertheless by processing, mixing or blending, the orderer hereby transfers title in the new property or object that is due to it to BEKA at the scope of the invoiced value of the reserved goods.

6.3.3 The orderer shall keep the reserved goods in custody free of charge for BEKA.

6.3.4 The orderer hereby assigns any claims against third parties that result from the further sale of the goods or the product in full or at the amount of any shared title portion of BEKA according to the above item 6.3.2 to BEKA as collateral. BEKA accepts the assignment. The orderer's obligations named in item 6.2 shall also apply in view of the assigned claims.

6.4 As far as validity of the property within the meaning of item 6.1 is linked to specific prerequisites or requirements of form in the orderer's country, the orderer shall ensure that these are met at its expense.

6.5 The orderer shall keep goods of BEKA with care while not the unrestricted owner yet, and store them professionally and clearly separated from any other and own goods. BEKA shall have the right to take out theft, breakage, fire, water and

other damage insurances for the reserved goods at the orderer's expense if the orderer has not verifiably taken out a corresponding insurance yet.

6.5.1 The orderer shall not have the right to perform any other disposals than those in accordance with item 6.3, such as sale, pledging or transfer of the reserved goods as collateral.

6.5.2 In case of non-contractual conduct of the orderer, in particular in case of default of payment, BEKA shall have the right to take back the goods after a reminder and the orderer shall be obliged to release them. Apart from this, i.e. at contractual conduct of the orderer, BEKA may only demand release of the goods if it has withdrawn from the contract. Opening of insolvency proceedings concerning the orderer shall entitle BEKA to withdraw from the contract and to demand immediate return of the delivered object.

6.6 The orderer's claims from the further sale of the reserved goods are hereby assigned to BEKA, including VAT. The orderer shall be entitled to collect such claims in addition to BEKA even after the assignment. BEKA commits to not collecting the claims as long as the orderer meets its payment obligations towards BEKA, does not enter default of payment, no application for opening of insolvency proceedings has been filed and no other defect concerning its ability to perform is present. If this is the case, BEKA may demand that the orderer disclose the assigned claims and their debtors to it, provide all information required for collection, hand over the associated documents and inform the debtors (third parties) of the assignment.

6.6.1 If the reserved goods are sold by the orderer together with any other goods not owned by BEKA, the assignment of the claim from further sale shall only be applied at the amount of the invoiced value for the respective reserved goods sold. In case of sale of goods in which BEKA holds shared title, the assignment of the claim shall apply at the amount of these shared title portions.

6.6.2 Items 6.6. and 6.6.1 shall apply accordingly when performing a contract for work or a work delivery contract.

6.7 If the value of the existing collateral exceeds the claims secured in total by more than 10%, BEKA shall be obliged to release collateral chosen by BEKA at the orderer's request.

6.8 The orderer shall inform BEKA without delay about any seizure, attachment or other impairment by third parties, provided that this is permitted by law. Costs that BEKA must bear to remove such impairments shall be at the orderer's expense, except if they can be collected from a third counterparty.

## **7. Complaints about the goods, warranty**

7.1 Defects to the goods generally can only be asserted against BEKA if the goods subject to complaint have been purchased in the scope of the sales network accepted by BEKA. The basis for liability for defects of BEKA shall be the agreement reached about the priorities of the delivery object. All product descriptions that are the object of the individual contract shall be deemed agreements on the properties of the delivered object; there shall be no difference of whether the product description comes from the orderer or from BEKA. As far as the property was not agreed, whether or not a defect is present is to be assessed according to the statutory provisions. BEKA assumes no liability for any public statements of any other third parties (e.g. advertising statements).

7.2 The time of passing of risk according to the above item 4.3 shall be decisive for the contractual condition of the delivery object.

7.3 The orderer's claims for defects require that it has met its statutory examination and complaint obligations (Sections 377, 381 German Commercial Code). If a defect becomes evident during the examination or at a later time, BEKA must be informed of this in writing without delay. Reporting shall be deemed without delay if it takes place within two weeks; timely dispatch of the report shall be sufficient to comply with the deadline. Independently of this examination and complaint obligation, the orderer shall report any obvious defects (including wrong and reduced deliveries) in writing within two weeks of the delivery, with timely dispatch of the report being sufficient here as well to meet the deadline. If the orderer doesn't perform proper examination and/or reporting of the defect, liability of BEKA for the defect not reports shall be excluded. Apart from this, reported defects shall be reported without delay.

7.3.1 If the object of the delivery is defective, BEKA shall have the choice between subsequent performance by removal of the defect (improvement) or by delivery of an object without defect (replacement delivery). The right to refuse subsequent performance under the statutory prerequisites shall not be affected by this. However, BEKA shall have the right to make the owed subsequent performance dependent on it that the orderer pays the due purchased price, with the right to retain a part of the purchasing price that is appropriate at a ratio to the defect.

7.3.2 In the scope of the statutory provisions, the orderer shall have a right to withdraw from the contract if BEKA lets an appropriate period for subsequent performance that was set to it pass without result or refuses it seriously and finally – under consideration of the statutory exceptions. However, this shall not apply if there is only an inessential defect. In this case, the orderer shall only have a right to reduce the contractually agreed price. The right to reduction of the contractually agreed price shall be excluded apart from this.

7.4 The orderer shall give BEKA the required time and opportunity for subsequent performance after coordination with BEKA. Apart from this, BEKA shall be exempt from liability for the resulting consequences. In urgent cases in which operating safety is endangered or to defend against unreasonably high damage, the orderer shall have the right to remove the defect directly or to have it removed by third parties and to demand reimbursement for the required expenses from BEKA, provided that it has informed BEKA of this at once.

7.5 If the orderer does not give BEKA any opportunity to convince itself of the defect, and specifically if it does not provide the goods subject to the complaint without delay upon demand (within the meaning of item 7.3), all claims for defects shall expire.

7.6. Items 7.1 to 7.5 shall not cover such defects that are due to unsuitable or improper treatment, defective installation, improper maintenance, unsuitable operating equipment, defective construction sites, unsuitable substrate, chemical, electrochemical or electrical influences, excessive use or natural wear, if and as far as BEKA is not at fault for this. Furthermore, BEKA shall not consider such complaints that are due to independent changes, rework or improper improvement of the object of delivery or the resulting consequences.

7.6.1 If and as far as use of the object of delivery leads to any infringement of commercial property rights (patents, design patents or utility samples, trademark rights) or copyrights within the country, BEKA shall, at its expense, generally procure the right to further use for the orderer or modify the object of delivery in a manner that is reasonable for the orderer so that the violation of property rights is no longer present. If this is not possible at economically appropriate conditions or within an appropriate period, the orderer shall have the right to withdraw from the contract. Subject to these prerequisites, BEKA shall also have a right to withdraw from the contract. Beyond this, BEKA shall indemnify the orderer against undisputed or finally determined claims of the affected property rights holders.

7.6.2 The obligations of BEKA named in item 7.6.1 are final for the case of property right or copyright infringements and shall only apply if the orderer has informed BEKA about any asserted property right or copyright infringements without delay, supports it at an appropriate scope in defending against the claims asserted or permits execution of the modification measure in accordance with item 7.6, if all defence measures, including out-of-court provisions, are reserved, the defect of title is not due to an instruction of the orderer and the infringement of rights was not caused because the orderer independently modified the delivered object or used it in any manner that was not contractual.

7.6.3 For damage due to suggestions or consultations that were culpably omitted by BEKA or defective, which took place before or after conclusion of the contract or due to culpable violation of other contractual secondary obligations – in particular instruction for operation and maintenance of the object of delivery - due to which the orderer cannot contractually use the delivered object, the provisions of items 7.1-7.6 and 9 shall apply subject to exclusion of further claims of the orderer.

## **8. Software usage rights**

8.1 If and as far as the object of delivery contains any software, all rights in such software, including copies, as well as the documentation, including copies, in particular copyrights, the right to or in inventions and technical property rights shall be due to BEKA exclusively. This shall also apply to processing of the software by BEKA.

8.2 BEKA grants the orderer a simple, non-exclusive and non-transferrable right without limitation in time to use the software delivered with the delivered object, including its documentation. The software is only provided for use on the delivery object intended for this. Use of the software on more than one system is forbidden, as well as awarding of sublicenses.

8.3 The orderer shall have the right to reproduce, revise, translate the software, or to convert it from object code to source code and produce backup copies at the required scope according to the state of the art at the legally permitted scope of Sections 69a et seqq. Copyright Act. In this, the orderer commits to neither removing the manufacturer's information, and in particular the copyright notes, nor to change them without the explicit advance consent of BEKA.

## **9. Liability**

9.1 BEKA shall be liable for reimbursement for damage or expenses from self-performance, reversal or termination according to the proviso of the following provisions:

9.1.1 For damage caused wilfully or grossly negligently by BEKA or its statutory representatives or vicarious agents, BEKA shall be liable without limitation in amount.

9.1.2 For damage from violation of life, body or health, BEKA shall be liable without limitation even for its own slightly negligent violation of obligations or that of their statutory representatives or vicarious agents.

9.1.3 In case of slightly negligent violation of obligations, BEKA shall be liable for damage from violation of essential contractual obligations without which the purpose of the contract cannot be achieved, and in the compliance with which the orderer regularly trusts, limited in amount to the damage typically foreseeable for the contract. This shall apply accordingly to negligent violation of essential contractual obligations of the statutory representatives, committees, or vicarious agents of BEKA.

9.1.4 Apart from the case of wilful intent and gross negligence, BEKA shall not be liable for indirect damage, such as additional effort, lost profit or lost savings.

9.1.5 Liability from the Product Liability Act shall be unaffected, as well as liability in case of maliciously concealed defects or from taking over any guarantee.

9.1.6 Any claims of the orderer from defects of material and title shall expire one year after delivery or acceptance. This shall not apply to statutory special provisions for material release claims of third parties, in case of malicious intent of BEKA and to claims in the supplier recourse at final delivery to a consumer. The expiration periods for other damages claims, in particular those from tort, shall expire according to the statutory expiration periods. This shall apply accordingly to claims according to the Product Liability Act.

## **10. Applicable law and place of jurisdiction**

10.1 The headquarters of BEKA are agreed as place of jurisdiction for any disputes from and in connection with this contractual relationship, provided that the orderer is a merchant. BEKA shall, however, independently of this remain entitled to raise a claim against the orderer at its general place of jurisdiction.

10.2 The parties may raise a claim before the district court (Amtsgericht) without consideration of the value of the object in suit.

10.3 Any claims from or in connection with this contract shall be subject to the law of the Federal Republic of Germany, subject to exclusion of UN purchasing law.